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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 03 204 52718 Office: VERMONT SERVICE CENTER Date: AUG 24 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral fellow at the Center for Biomedical Research, Population Council, New York, New York. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

> burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner describes her work:

> My present research is aimed at investigating strategies for inducing effective antiviral immune responses using specific stretches of nucleic acids (immunostimulatory DNA sequences, ISS ODNs) as an oral vaccination strategy in vivo (applied to the tonsils). ISS ODNs have been shown to boost the efficiency of vaccines and are believed to work by enhancing the ability of antigen presenting cells to stimulate immunity. This project investigates the potential effect of ISS ODNs on most potent antigen presenting cells, dendritic cells, to promote simian immunodeficiency virus (SIV)-specific immune responses. The similarity between HIV and SIV . . . provides a unique system to (i) study HIV infection and (ii) design and to test novel anti-viral vaccine and therapeutic strategies.
>
> This research . . . has important implications for the development of non-invasive vaccine and therapeutic approaches against HIV infection. My work focuses on the highest priority aims: development of drug-free mechanisms to prohibit HIV infection and cure already established infection in children and adults. . . .
>
> I have performed a number of pioneering studies on the involvement of immunological factors in multiple sclerosis. . . . I was the first to describe the elevated expression of CD40L co-stimulatory molecule on freshly isolated T lymphocytes in multiple sclerosis patients. . . .
>
> The extremely important aspect of my research is the study of the mechanisms involved in immune cell migration to the central nervous system. . . .
>
> My research has made such an impact on the scientific community that it have been [sic] cited in 75 articles . . . [which] demonstrates that my advances in the field of Neuroimmunology have been widely implemented. . . .
>
> [T]here does not exist an immunologist in the United States who has my unique talent, experience and skills required to carry out the research in immunology that may lead to the cure for many autoimmune diseases viral infections [sic] such as HIV.

The petitioner submits printouts from a citation database, corroborating the petitioner's claim that her articles have been cited a total of 75 times. Fifteen of these citations are self-citations by the petitioner and/or her co-authors, which leaves an impressive number of independent citations.

The petitioner submits several witness letters, examples of which we shall discuss here. The petitioner had studied at the Karolinska Institute, Stockholm, Sweden. Several faculty members at that institution have offered letters of support. For example, Dr. Mats Söderström, an associate professor at the Karolinska Institute, states:

> The extremely important aspects of [the petitioner's] research are studies on mechanisms involved in cell subset migration to the central nervous system. [The petitioner's] findings on elevated expression of chemokine receptors on cerebrospinal fluid cells in multiple sclerosis patients provide critical insights in the immunological mechanisms of multiple sclerosis.
>
> [The petitioner's] data on dendritic cell biology suggest a new intriguing model for the development of multiple sclerosis. Given the functional plasticity of dendritic cells, modulation of their functions will be ultimately evaluated as a therapeutic target in this detrimental disease.

Other researchers, who have had varying degrees of interaction with the petitioner, praise the petitioner's work as well. Dr. [redacted] of the Cleveland Clinic Foundation states that the petitioner "obtained exciting results" that "provided important insights into the process by which T lymphocytes are activated and recruited to the CNS [central nervous system] of . . . MS patients. . . . The development of these data constitute a noteworthy accomplishment for such a newcomer to the field of neuroimmunology." Dr. Igor Kramnik, an assistant professor at the Harvard School of Public Health, asserts that the petitioner "is an outstanding researcher with international standing" based on her past work with multiple sclerosis and her ongoing studies of HIV/AIDS.

With regard to the petitioner's current work, the petitioner submits letters from researchers at the Population Council. These letters, for the most part, describe rather than evaluate the petitioner's work, and focus on the goals of the research rather than the progress made so far in reaching those goals. The implication is that this research, at the time, was at too early a stage to have yielded definitive results.

The director, in denying the petition, concluded that the petitioner has not shown that her work is national in scope. Medical and scientific research at major institutions is inherently national in scope, because the results are disseminated nationally (and internationally) through publications and conferences and because the findings of such research tend to apply universally rather than only locally. We therefore withdraw the director's finding that the petitioner's work lacks national scope.

The director stated: "some of the authors who expound on United States national interests are not now, nor have they ever been, engaged in research in the United States." The director fails to explain the relevance of this observation when it comes to the study of diseases that afflict victims around the world. Considering that the petitioner is (obviously) an alien seeking an immigration benefit, it should hardly be considered a detrimental factor that some of her witnesses are from outside the United States.

The director observed that many of the witnesses have "far greater qualifications than those of the beneficiary herself," and that "the letters strain to transform a postdoctoral researcher into a legendary scientist." It is true

that a postdoctoral researcher is generally at a very early stage in his or her career, and the burden is on the petitioner to establish that a waiver is in order despite this fact. At the same time, there is nothing in the statute, regulations, or case law to categorically disqualify postdoctoral researchers for the waiver. An alien need not be at the pinnacle of his or her field of endeavor to qualify for a waiver.

Counsel, on appeal, notes that postdoctoral positions are inherently temporary and therefore labor certification is not an option. The corollary to this argument, of course, is that an alien need not be a permanent resident in order to complete the temporary postdoctoral assignment. The national interest waiver is not merely a mechanism for postdoctoral researchers to bypass the professionally inconvenient job offer requirement. An alien researcher's desire to immigrate before he or she is considered ready for permanent employment is not a national interest issue, but rather the alien's own subjective preference.

Clearly, the temporary nature of a postdoctoral appointment is not, by itself, a strong qualifying factor for the wavier. We must, therefore, look beyond the alien's present, temporary assignment, and consider the alien's overall track record as a researcher. The petitioner's past work is the best available guide to what we can reasonably expect from the petitioner in the future.

The director correctly observes that publication of one's work is generally expected of postdoctoral researchers, rather than badge of distinction earned by only a select few. The director, however, failed to give due consideration to the field's reaction to the petitioner's published work. The director acknowledged that the petitioner's work "has often been cited," but then immediately dismissed this fact as unimportant. Counsel, on appeal, argues that the director should have given more weight to the heavy citation of the petitioner's work. We are inclined to agree with counsel's argument. The citations, taken with letters from highly placed individuals beyond the petitioner's own circle of collaborators, establish that the petitioner has had a palpable impact on her field of endeavor. It appears reasonable to conclude that further beneficial impact is likely in the future.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. The director's denial rests on several flawed arguments, and cannot stand. On the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.